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 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-244

In the Matter of

Amendment of Section 73.202(b), RM-8315
 Table of Allotments, RM-8401
 FM Broadcast Stations.
 (Pike Road and Ramer, Alabama)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 8, 1995; Released: September 19, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 8 FCC Rcd 7024 (1993), issued in response to a petition filed by Fred Randall Hughey ("petitioner") proposing the allotment of FM Channel 248A to Pike Road, Alabama, as its first local aural transmission service. Petitioner filed supporting comments in response to the *Notice*. A. J. Miller ("Miller") filed comments and a counterproposal.² Comments were also filed individually by James W. Garrett, Jr., Esq. ("Garrett"), Roberta B. Pinkston ("Pinkston") and Cal Thornton ("Thornton").³ Petitioner filed reply comments.

2. Petitioner initially presented information in an effort to demonstrate that Pike Road qualifies as a community for allotment purposes. However, as Pike Road is unincorporated and is not credited with a separate population listing in the 1990 U.S. Census,⁴ the *Notice* requested petitioner to provide additional demographic information to demonstrate whether it has other community indicia such as a local newspaper, social, economic or cultural organizations, municipal services, or governmental units that identify themselves specifically with Pike Road. See, e.g., *Gretna, et al., Florida*, 6 FCC Rcd 633 (1991); *Oak*

Grove, Florida, 5 FCC Rcd 3774 (1990); *Statenville, Georgia*, 5 FCC Rcd 2685 (1990); and *East Hemet, et al., California*, 4 FCC Rcd 7895 (1989).

3. In response to our request for additional demographic information, petitioner relies on information presented initially. Petitioner describes Pike Road as located at the intersection of State Highways 40 and 85, and provided a photograph depicting a road sign indicating the direction to Pike Road. Petitioner advises that although Pike Road has no local government, it contains a volunteer fire department, library, softball field, schools, churches and business establishments. In addition, petitioner advises that Pike Road has a post office, its own zip code and telephone exchange, and relies on several photographs to reinforce his claim that Pike Road is a *bona fide* community.⁵

4. In further support, petitioner claims that two distinct social organizations exist in Pike Road (i.e., the Pike Road Community Club and the Pike Road Civic Club), which function as the nucleus around which Pike Road exists. Petitioner provided a statement of Joyce Turnipseed, who is identified as the President of the Board of Directors of the Community Club and an officer of the Civic Club, in which Ms. Turnipseed advises that the Community Club provides a clubhouse/meeting room, a swimming pool and ballfield complex for the community. Further, we are advised that the Civic Club provides a small scholarship to a local Montgomery, Alabama, university for Pike Road youth; it also maintains the "Marks House", which is on the National Historical Register. Moreover, Ms. Turnipseed advises that the Civic Club, which has elected leaders, conducts an annual arts and crafts fair and flea market to generate a majority of the revenue for its operating budget. Additionally, petitioner acknowledges that although funding for schools, roads, the library and sheriff's services are provided by Montgomery County, the Pike Road Community and Civic Clubs provide supplemental funding to the volunteer fire department and library. Petitioner also provided an article from the Montgomery, Alabama, *Advertiser* regarding the efforts of the "Pike Road Area Awareness Committee" to oppose a planned bypass around Montgomery that would bisect Pike Road.⁶ Petitioner maintains that the presence of those social organizations, and the participation therein of Pike Road citizens, serve to demonstrate that its residents function as and conceive of themselves as residents of a community with common local interests.

5. Miller counterproposes the allotment of Channel

¹ The community of Ramer, Alabama, has been added to the caption.

² Public Notice of the counterproposal was given December 15, 1993, Report No. 1990.

³ Thornton's comments were not served on the petitioner, in violation of Section 1.420 of the Commission's Rules. See also paragraph 4 of the Appendix to the *Notice*. As Thornton's comments constitute an *ex parte* presentation, they will not be considered. See Sections 1.1200, 1.1202(b)(1) and 1.1208 of the Commission's Rules.

⁴ As stated in the *Notice*, the population attributed to Pike Road in the 1990 U.S. Census listing is that of the Pike Road Division of Montgomery County (emphasis added). However, according to the Census Bureau ("Bureau"), a census county division ("CCD") is a geographical area that is delineated merely for the purpose of gathering data for incorporation into

the Census. According to the Bureau, a CCD has no legal function nor is it a governmental unit. Additionally, the boundaries of a CCD are usually delineated to follow visible features and in most cases coincide with census tract or block numbering area boundaries. Moreover, CCD's are named based on a place, county or familiar local name that identifies its location. Cf. *Hollywood and California, Maryland and King George, Virginia*, 3 FCC Rcd 4043 (1988) (area comprised of collective Census Enumeration Districts "CEDs" does not constitute a single community for allotment purposes).

⁵ Among the photographs submitted by the petitioner were those of several businesses, the Pike Road Community Club and the Pike Road substation of the "East Montgomery Water, Sewer & F.P.A."

⁶ The *Advertiser* article characterized Pike Road as the "east Montgomery community of about 2,000..."

248A to Ramer, Alabama,⁷ as that community's first local aural transmission service. In support of his proposal, Miller asserts that unlike Pike Road, Ramer is an incorporated community with municipal services, wherein 375 persons reside. In further support of his proposal, Miller refutes petitioner's claim regarding Pike Road's status as a community for allotment purposes. According to Miller's engineering consultant, an examination of a U.S.G.C. 7.5' topographic map depicts Pike Road's location at the intersection of Montgomery Highway 85 and an unmarked highway. Further Miller asserts that the Pike Road area is agricultural in nature. According to an on-site examination by its consultant, Pike Road is described as being comprised of one business, an abandoned store, an unkempt softball park, an unmanned substation of the East Montgomery Water, Sewer and F.P.A., and a county elementary school. Miller advises that within a mile radius of the Pike Road crossroads, there is but one commercial business, and a total of twenty-four residents. Further, Miller advises that Pike Road contains "no municipal services, organized community maintenance" or other community components to distinguish Pike Road from the remaining agricultural areas of Montgomery County.

6. Garrett, a resident of Pike Road, also advises that that locality is rural in nature, and is devoid of any political organizations, municipal services or governmental units. Further, Garrett remarks that Pike Road has no local governmental structure and therefore, its residents are represented by a Montgomery County commissioner. Additionally, Garrett advises that while Pike Road does have a volunteer fire department, and its water service is provided by a sanitation district that is independent from the Montgomery, Alabama, system, it has no local police service, or independent telephone exchange, or local schools. Thus, Garrett urges that as the components petitioner attributes to Pike Road are not sufficient to conclude that it is a *bona fide* community for Section 307(b) purposes, the proposal to allot Channel 248A to that locality should be denied.

7. Pinkston, also a resident of Pike Road, asserts that Pike Road is considered by area residents to be part of Montgomery, Alabama. In addition to corroborating Garrett's claims, Pinkston advises that the volunteer fire department serving Pike Road also serves other communities on the outskirts of Montgomery, including Waugh, Cecil, Matthews and Mt. Meigs. Moreover, Pinkston states that the Pike Road postal facility also serves several other suburban communities of Montgomery County. Pinkston advises that telephone service is provided to Pike Road through a Montgomery, Alabama, telephone exchange. Further, Pinkston reports that Pike Road has no local newspaper, or economic or commercial organizations. Pinkston describes Pike Road as having no defined boundaries, and alleges it is merely one of many localities on the outskirts of Montgomery. Further, Pinkston states that approximately 95% of Pike Road residents are employed in Montgomery. Thus, Pinkston adds that the residents of Pike Road identify with Montgomery rather than Pike Road and consider themselves to be "Montgomerians." Pinkston concludes that Pike Road fails to qualify as a community for Section 307(b) purposes and urges denial of the petitioner's proposal.

8. In response, petitioner refutes Miller's allegations concerning the degree of community indicia comprising Pike Road, again relying mainly on photographs initially presented with his rulemaking request. Petitioner claims that although Pike Road may contain agricultural areas, that should not preclude its status as a community for allotment purposes. In addition to the attributes previously identified, petitioner lists three other churches, nine businesses, an airport and a YMCA camp, which he associates with the area, in an effort to demonstrate that other businesses do identify with Pike Road. Moreover, as to the comparative consideration to determine whether Pike Road or Ramer, Alabama, should receive a first local FM transmission service, petitioner maintains his reliance on the 1990 U.S. Census which attributes the Pike Road Division of Montgomery County with a population of 4,278. Petitioner contends that since Pike Road is a larger community than Ramer, it is more deserving of the two localities to receive a first local aural transmission service.

9. Petitioner also disputes Garrett's and Pinkston's allegations. As to Pike Road's characterization as largely a rural area, petitioner relies on the existence of the Pike Road Community and Civic Clubs and the Area Awareness Committee to demonstrate community cohesiveness. As to Pinkston's assertions, petitioner disputes that a majority of the residents of Pike Road identify themselves as Montgomery residents. According to petitioner, a canvass of area residents led to the opposite conclusion. Therefore, petitioner concludes that Pinkston's statement must be viewed as opined as it is not factually documented. While agreeing with Pinkston that Pike Road has no local government, petitioner remarks that the Commission has not rigidly applied that criteria in all instances to establish a locality's status as a community for Section 307(b) purposes. Additionally, petitioner claims that although the Pike Road postal facility may serve other areas, such as rural routes, its postmaster claims that the majority of the postal patrons are located in Pike Road. Petitioner provided a map sketched by the Pike Road postmaster in an effort to demonstrate the boundaries of Pike Road, allegedly containing approximately 1,174 Pike Road addresses. Additionally, petitioner reports that while the Pike Road telephone exchange may be part of the Montgomery, Alabama, calling area, Pike Road does have its own distinct prefix for its area telephones.

10. Petitioner urges that based on the information presented in support of his proposal to demonstrate that Pike Road contains community indicia to qualify it as a community for allotment purposes, coupled with its larger population than Ramer, the Pike Road proposal should prevail in this proceeding.

11. After a careful review of the proposals before us for consideration, we conclude that neither proposal can succeed in accordance with Commission precedent and policy. With respect to the petitioner's proposal, based upon the information initially presented, we recognize that there are some indicia of community status present in Pike Road, as represented in this instance by photographs of the Pike Road Community and Civic Clubs, a volunteer fire department, a library, a few churches, some commercial activity, and a postal facility. However, Pike Road's inclusion in the 1990 U.S. Census as a County Census Division of Montgomery County does not distinguish it as a separate popula-

⁷ The distance between Ramer and Pike Road is 7.7 kilometers

whereas a distance of 115 kilometers is required in this instance.

tion grouping.^{8 9} Although Pike Road is listed in the Rand McNally Commercial Atlas, its geographical location alone is not sufficient to establish community status. See, *Vimville, Mississippi*, 48 FR 5974 (1983) and *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991).

12. Neither does the petitioner's reliance on the existence of the Pike Road Community and Civic Clubs evidence community cohesiveness among its populace.¹⁰ Additionally, petitioner has not shown other indicia of community status such as a city hall, local government, municipal services, newspaper, financial institutions or civic organizations such as a Lions Club or Rotary Club, or organizations such as a Chamber of Commerce. While petitioner alleges that there are other businesses that identify with Pike Road, he did not provide documented evidence to reflect those entities' nexus with Pike Road. Commission policy is to reject assertions of community status where a nexus has not been demonstrated between the political, social and commercial organizations and the community in question. See *Gretna, Marianna, Quincy, and Tallahassee, Florida*, 6 FCC Rcd 633 (1991) and cases cited therein. Nor did petitioner provide a telephone directory, or excerpts thereof, to reflect the addresses of Pike Road residents. Also, petitioner did not provide sufficient evidence that Pike Road residents consider themselves as residents of a community around which their interests coalesce. See *Mighty-Mac Broadcasting Co.*, 58 RR 2d 599, 603 (1985); *North Naples, Florida*, 41 RR 2d 1549, 1551 (1977). The statement provided by Joyce Turnipseed relates to the functions of the Pike Road Community and Civic Clubs and is not representative of the community as a whole. In addition, the comments of Pinkston, a resident of Pike Road, expressly contradicts petitioner's assertion that the residents of Pike Road conceive of themselves as a community. Moreover, the comments of Garrett, another resident of Pike Road, also questions whether Pike Road is a community for allotment purposes. Further, the results of canvassing of Pike Road residents by petitioner is not persuasive because no underlying data or description of methodology was submitted.¹¹ On the basis of the information presented, we find that petitioner has failed to establish that Pike Road qualifies as a community for allotment purposes. See *Stock Island, Florida*, 8 FCC Rcd 343 (1993).

13. Next, we consider Miller's counterproposal to allot Channel 248A to Ramer, Alabama. In its proposal, Miller represented that Ramer is "a functioning, ... incorporated community... with municipal services." On the basis of those representations, as well as its acceptability from our preliminary engineering analysis, the proposal was accepted for consideration. In retrospect, we believe its proposal should not have been accorded such status. According to the 1990 U.S. Census, Ramer is not listed as an incorporated entity or a Census Designated Place. The Rand

McNally Commercial Atlas indicates that Ramer has a post office, zip code, and a population of 450. However, the presence of a post office and zip code is not sufficient to establish community status. See *Crestview and Westbay, Florida*, 7 FCC Rcd 3059 (1992), and cases cited therein. Nor does Ramer's listing in the Rand McNally Commercial Atlas indicate anything more than its geographical location. See *Vimville, Mississippi, supra*. Therefore, it was incumbent upon Miller to initially present the Commission with sufficient evidence to demonstrate that Ramer is a community for allotment purposes. See *Garden City, Indiana*, 6 FCC Rcd 3747 (1991). We conclude that Miller failed to provide substantially complete information with his counterproposal, in contravention of Commission policy,¹² to demonstrate that Ramer has political, social, economic or cultural indicia, or to provide the testimony of local residents attesting to Ramer's community status. Therefore, we conclude that it is not a *bona fide* community for allotment purposes and must be denied.

14. In consideration of the above, IT IS ORDERED, That the petition for rule making filed on behalf of Fred R. Hughey to allot FM Channel 248A to Pike Road, Alabama (RM-8315), IS DENIED.

15. IT IS FURTHER ORDERED, That the counterproposal of R.J. Miller to allot Channel 248A to Ramer, Alabama (RM-8401), IS DENIED.

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁸ See *Trade, Tennessee and Beech Mountain, North Carolina*, 6 FCC Rcd 5835 (1991).

⁹ Moreover, although petitioner supplied an article from the Montgomery, Alabama, *Advertiser* which describes Pike Road as the "east Montgomery community of 2,000" the reported population figure is considered an unofficial source, and in any event, does nothing to enhance Pike Road's status as a community for allotment purposes.

¹⁰ In fact, we note that pursuant to the information provided by petitioner with respect to the Pike Road Civic Club, it lists among its active members numerous residents of Montgomery, as well as residents of Mathews, Mt. Meigs and Cecil, Alabama.

¹¹ While petitioner alleges that there was a connection between Pinkston and Garrett in the preparation of their opposition to the Pike Road proposal, we find that their comments are still relevant because they constitute views of local residents. Further, the evidence of the alleged connection is merely circumstantial evidence such as consecutive certified mail identification numbers in the service of their oppositions to the petitioner and his consulting engineer.

¹² See *Springdale, Arkansas, Carthage, Aurora and Willard, Missouri*, 4 FCC Rcd 674 (1989); *Broken Arrow, Oklahoma*, 3 FCC Rcd 6507 (1988).